



**Gathuri v School Management Committee Shah Lalji Nagnpar Academy (Cause 17 of 2020) [2023] KEELRC 2561 (KLR) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2561 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 17 OF 2020  
DN NDERITU, J  
OCTOBER 19, 2023**

**BETWEEN**

**JAYNE NYAGUTHII GATHURI ..... CLAIMANT**

**AND**

**SCHOOL MANAGEMENT COMMITTEE SHAH LALJI NAGNPAR  
ACADEMY ..... RESPONDENT**

**JUDGMENT**

**I. Introduction**

1. The claimant commenced this cause by way of a memorandum of claim dated 11<sup>th</sup> March, 2020 filed in court on 8<sup>th</sup> June, 2020 through Karanja-Mbugua & Co Advocates. As expected, the statement of claim is accompanied with a verifying affidavit, claimant's written statement, a list of documents and copies of the listed documents.
2. The claimant is seeking the following -
  - a. A declaration that the Claimant's termination of employment was unlawful, unfair, and contravenes the principles established under the *Employment Act*.
  - b. A declaration that the termination of the Claimant's employment by the Respondent was unconstitutional and unlawful.
  - c. An award of damages and compensation for violation of the Claimant's rights.
  - d. An order for the Respondent to pay the Claimant his termination dues and compensatory damages totaling to Kshs.1,474,990/=.
  - e. Costs of this suit.
  - f. Any other relief that the Court deems fit to grant.



3. On 12<sup>th</sup> August, 2020 the respondent entered appearance through Sheth & Wathigo Advocates and filed a reply to the memorandum of claim on 19<sup>th</sup> August, 2020 praying that the claimant's cause be dismissed with costs for want of merits.
4. The respondent also filed a list and bundle of documents alongside witness statements by ALLAN KIBUI KIMANI (RW1) and ANDREW K. THUKU (RW2). It also filed a supplementary list of documents and copies thereof on 25<sup>th</sup> November, 2021 and a further list of documents and copies thereof on 27<sup>th</sup> June, 2022.
5. The claimant filed a supplementary list and bundle of documents on 20<sup>th</sup> December, 2021.
6. This cause came up in open court for hearing on 21<sup>st</sup> February, 2022 when the claimant (CW1) testified and closed her case. The defence was heard on 15<sup>th</sup> March, 2022 whereby RW1 testified and again on 25<sup>th</sup> October, 2022 when RW2 testified and the Respondent's case was closed.
7. Counsel for both parties addressed and summed up their respective client's case by way of written submissions. Counsel for the claimant, Mr. Kariuki, filed his submissions on 16<sup>th</sup> January, 2023 while Counsel for the Respondent, Miss Oteyo, filed her submissions on 17<sup>th</sup> February, 2023.
8. The court shall to some detail analyze, interrogate, and summarize the evidence availed by both sides as hereunder in order to bring to the fore the evidence and the issues in contest between the parties to aid in the understanding, reconciling, and rationalizing the decision subsequently arrived at by the court.

## **II. The Claimant's Case**

9. The claimant's case is expressed in the memorandum of claim, the oral and documentary evidence by the claimant (CW1), and the written submissions by her Counsel and the same is summed up as hereunder.
10. In her statement of claim the claimant pleads that she was engaged by the Respondent as a teacher from 1<sup>st</sup> March, 2013 until 4<sup>th</sup> April, 2019 when she was unfairly and unlawfully dismissed as the headteacher of the junior school.
11. It is the claimant's plea that as the junior school headteacher she was also charged with the responsibility of recovering school fees arrears from parents who owed balances. She received such balances either in cash or via her Mpesa account for onward transmission to the accountant who was supposed to issue official receipt and bank the same and update the financial records and reports.
12. The claimant pleads that in or about January, 2019 the respondent through RW2, the school manager, made allegations that the claimant had failed, refused, and or neglected to submit monies that she had received and or collected from parents as school fees arrears. Consequently, the claimant was issued with a show-cause letter demanding her to offer an explanation why she had not accounted for monies she had collected and received. She responded to the show-cause letter denying any fraud, theft, or misappropriation of monies collected from the concerned parents. She stated that all the monies she had received had been submitted to the accountant, one Euxine Gachoka Waweru (Euxine).
13. The claimant pleads that in the subsequent disciplinary hearing she availed evidence that she had submitted all the monies she had received to the said accountant. That notwithstanding, the claimant was served with a letter of termination by way of summary dismissal.
14. It is the claimant's case that she did not engage in any misconduct and that the dismissal was unfair, unjust, and unlawful for lack of both substantive and procedural fairness.



15. It is on the basis of the foregoing that the claimant pleads for the following liquidated compensation in clause 19 of the memorandum of claim –
- i. Salary in lieu of Notice .....Kshs.106,000/=
  - ii. Service Pay for 6 years and 1 month.....Kshs.96,990/=
  - iii. Compensation for unfair termination the equivalent of 12 months' salary...Kshs.1,272,000/=
- Total .....Kshs.1,474,990/=
16. In her testimony in court the claimant reiterated the foregoing and stated that she joined the respondent as a teacher on 1<sup>st</sup> March, 2013 but started working as a headteacher on 1<sup>st</sup> September, 2013. She stated that besides management of the junior school and discipline of pupils she was also responsible for collecting fees arrears. She stated that she collected the fees in cash or through Mpesa. She was answerable to the manager. She alleged that for the money that she collected she remitted the same to the accountant for receipting and updating of records and the financial reports.
17. She stated that after she responded to the show-cause she was invited for a disciplinary hearing that was held on 2<sup>nd</sup> April, 2019. She testified that during the disciplinary hearing a parent who had paid fees balance of Kshs.16,000/= asserted that the same had not been reflected in her balance. The claimant stated that she had submitted the said sum to Euxine, the accountant, who had not reported for the new term in January, 2019.
18. She stated that on 4<sup>th</sup> April, 2019 she was served with a letter of termination yet she had not stolen any money or engaged in any form of misconduct. She insisted that she was not charged with any criminal conduct by the police. She stated that she is no longer teaching as the respondent ruined her reputation to every prospective employer.
19. In cross-examination, she admitted that collection of fees balances is not one of her spelt out duties or roles in her contract of employment. She also admitted that no record was maintained between her and the accountant on all or any of the monies that she remitted to the accountant upon collection from parents. She admitted that she is not aware of any other person, besides her and the accountant, who received monies from parents in payment of school fees.
20. She admitted that she was served with a show-cause letter to which she responded and that she attended the disciplinary hearing and came along with a co-worker, JANE AMONDI, as a witness. She insisted that she explained that she had submitted all the monies she collected to the accountant, Euxine.
21. She admitted that all her deductions to NSSF, the pension scheme wherein she was a contributor, and NHIF were duly remitted by the respondent.
22. In re-examination the claimant alleged that in collecting fees she was enforcing and implementing the policies of the respondent towards reduction and elimination of fees balances. She alleged that the management and particularly the manager, RW1, was fully aware of her fees collection efforts. However, she admitted that it is not one of the duties and roles assigned to her in her contract of employment.
23. It is on the basis of the foregoing evidence and circumstances that the claimant is seeking that judgment be entered in her favour as prayed in the memorandum of claim. The submissions by her counsel shall be considered in the succeeding parts of this judgment.



### III.the Respondent's Case

24. The respondent's case is contained in the reply to the memorandum of claim, the oral and documentary evidence adduced through RW1, the accountant, and RW2, the manager, and the written submissions by its Counsel, as summarized hereunder.
25. In the response to the claim the respondent to a large extent does not dispute the basic facts as pleaded and presented by the claimant as summarized above. However, the respondent categorically denies that the claimant was allowed, mandated, instructed, or allowed to demand, collect, or receive fees balances from parents or indeed in any other monies for and or behalf of the respondent or at all. It is pleaded that the claimant fraudulently demanded and received monies from parents allegedly on fees arrears yet the said monies were not paid and or surrendered to the accountant and did not reach the respondent.
26. Further, it is pleaded that in case the claimant received any fees monies from a parent, under whatever circumstances, she was supposed to immediately surrender the same to her secretary who should have made entries in the records and immediately surrender the same to the accountant for official receipting and updating of records. It is the respondent's position that the claimant did not follow this elaborate procedure which she was aware of or ought to have adhered to.
27. It is the respondent's case that the claimant received monies from parents and unlawfully withheld and or misappropriated the same and failed to account therefor with no evidence that she indeed remitted the same to the accountant. This apparent misconduct and failure to account led to complaints from parents who showed up with evidence that indeed they had paid money to the claimant for her to surrender the same in payment of fees balances which the claimant failed, refused, and or neglected to do.
28. It is the respondent's plea that after the claimant failed to account for monies received by her from the concerned particular parents she was issued with a show-cause letter on 26<sup>th</sup> March, 2019 and not in April, 2019 as alleged by the claimant. It is further pleaded that the claimant requested details of the charges and she was supplied with the same on 28<sup>th</sup> March, 2019. It is pleaded that the disciplinary hearing was held on 2<sup>nd</sup> April, 2019 wherein the claimant was defenseless in the face of the particular and unambiguous charges against her and offered no explanation or justification for her misconduct. It is pleaded that the claimant's witness of choice stated that she had not received monies from the claimant after the latter received from the parents and as such she had no records of payments from the more than three parents who complained of having paid fees through the claimant.
29. It is the respondent's position that after the disciplinary hearing, as the claimant had failed to account for the monies she had received from parents, it lost confidence and trust in the claimant and made the decision to terminate her on 4<sup>th</sup> April, 2019 for gross misconduct. It is the respondent's case that the claimant completely failed to demonstrate that she had remitted monies received by herself to the accountant as expected.
30. It is pleaded by the respondent that the claimant was afforded and accorded both substantive and procedural fairness, before, during, and after the disciplinary process.
31. The respondent called two witnesses to testify in court. Allan Kibue Kimani (RW1) is the accountant who replaced Euxine in January, 2019. He filed his statement on 23<sup>rd</sup> June, 2022 with the leave of the court and the claimant was recalled to testify on the evidence availed by RW1.
32. RW1 testified on 28<sup>th</sup> July, 2022 and stated that when he joined the respondent he, at the request of the management, undertook a detailed reconciliation and audit for fees paid and balances and submitted



- the same to the management. He stated that the process included considering all monies paid directly to the bank and any other monies paid to the school based on documentary evidence, bank statements, and official receipts.
33. RW1 stated that the claimant objected to the report that he prepared as she alleged that some of the parents whose names appeared in the list of those with fees balances had actually paid, but he insisted that his report was correct and accurate. He stated that he contacted the parents who had balances but some claimed that they had paid through the claimant either in cash or via Mpesa, yet there was no evidence that the said monies had been received in the accounts section.
  34. RW1 stated that the only evidence in payment of fees is an official receipt. He stated that once a parent deposits the money in the bank account a banking slip is availed and the accountant issues an official receipt.
  35. He stated that upon reconciliation, talking, and meeting with parents who alleged to have paid through the claimant, a total of Kshs.268,290/= received by the claimant was unaccounted for. He stated that the concerned parents had Mpesa statements or messages proving that indeed they had paid the monies in question through the claimant. He said that those parents who alleged to have given cash to the claimant were ignored as there was no evidence to confirm such cash remittances.
  36. However, RW1 stated that the claimant showed that she had remitted more than Kshs.491,273/= into the personal Mpesa line of the former accountant Euxine. He said that he could not verify why the said monies were paid as it was more than the alleged fees balances collected by the claimant and in any event the monies were paid into the personal Mpesa line of the said former accountant and the payments spread across 2017 to 2019.
  37. RW1 stated that he attended the disciplinary hearing and a parent by the name Mama Jansen testified that she had remitted Kshs.16,500/= through the claimant yet she still owed a balance of Kshs.15,185/=. He produced the documents in the two bundles filed by the respondent as exhibits 1 to 20. He stated that the respondent reported the loss of the money at Bondeni Police Station but no charges have been filed against the claimant. The respondent also reported Euxine to the same police station for loss and theft of other monies not related to the claimant's account.
  38. In cross-examination he stated that the claimant was under no circumstances allowed to collect or receive fees from any parent. He confirmed that he reconciled and audited the fees payments and authored the report filed in court. He emphasized that the payments made via Mpesa personal lines of the claimant to Euxine were not official but personal transactions and or business between the two which had nothing to do with the school as the said monies were never paid and or remitted to the respondent. He was categorical that it was not the duty of the claimant to demand, collect, or receive any fees or monies from parents although he admitted that he once received a sum of Kshs.40,000/= which the claimant had collected as fees from parents.
  39. Andrew K. Thuku (RW2), the manager of the respondent, gave his oral testimony on 25<sup>th</sup> October, 2022 based on his statement dated 24<sup>th</sup> August, 2020.
  40. He stated that in February, 2019 the management held a consultative meeting on how to collect fees arrears and the claimant was in attendance during that meeting. It was resolved that the parents be invoiced and the invoices were sent out through the pupils to deliver to the parents. It is then that some parents came complaining that the invoices were incorrect as they had already paid through the claimant via Mpesa and others by cash. The parents who had paid to the claimant had evidence to that effect via Mpesa statements or messages yet the claimant had no evidence that the monies she received were submitted to the accountant and receipted for.



41. He stated that the claimant had no mandate or authority to collect fees from parents. He stated that while the claimant would call and inform the parents of the balances due, she had no business collecting fees or demanding such payments. He stated that if, under whatever circumstances, the claimant received any monies from the parents she was under obligation to surrender the same immediately to the accountant and ensure that official receipt was issued.
42. He stated that there are only two legitimate options for a parent in payment of fees. One, and this is the preferred method, the parent pays into the respondent's account at the Bank of Baroda and brings the banking slip to the accountant for issuance of an official receipt immediately. Two, which is less desirable, if the parent paid in cash at the school, the accountant received the money and issued an official receipt immediately.
43. He stated that upon an audit and reconcillation carried out by RW1 on instructions from the management the claimant was found to have failed to remit and or account for Kshs.268,290/=. He stated that at the initial meetings the claimant deliberately refused and or failed to disclose that she had indeed received any monies from some parents and that she had failed to remit to the accountant and or to account for the same.
44. He testified that the claimant was invited for a disciplinary hearing and she came along with a witness, a co-worker, Jane Amondi, her secretary. He stated that the claimant had no evidence whatsoever that she had remitted the monies that she had collected and or received from parents to Euxine or to the respondent whatsoever. It is his evidence that the claimant actually stole from the respondent as the monies she collected and failed to account for was subsequently written off as bad debt.
45. He stated that the dismissal of the claimant was fair, just, and lawful as the claimant had engaged in gross misconduct. He stated that there was no bad blood between him and the claimant and that their relationship was cordial and professional for the time that they worked together. He maintained the foregoing position in cross-examination.
46. It is on the basis of the foregoing that the respondent prays that the claimant's cause be dismissed with costs. The submissions by counsel for the respondent shall be considered in the succeeding parts of this judgment alongside those by counsel for the claimant.

#### **IV.Issues For Determination**

47. This court has carefully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions by counsel for both parties. From the above the court identifies the following issues for determination –
  - a. Was the dismissal of the claimant by the respondent unfair and unlawful?
  - b. If(a) above is in the affirmative is the Claimant entitled to the reliefs prayed for?
  - c. What orders are appropriate on costs?

#### **V.Dismissal**

48. The issues in contest between the parties are rather straight forward. Without the necessity of repeating or recounting the contents of the pleadings and the oral and documentary evidence by the parties, the claimant was engaged by the respondent as a headteacher of its junior school between March, 2013 and April, 2019. She was dismissed on 4<sup>th</sup> April, 2019 for her alleged misconduct emanating from non-remittance of and or failure to account for fees arrears she collected from the parents in the sum of Kshs.268,290/=.



49. It is common ground that on 26<sup>th</sup> March, 2019 the claimant was issued with a show-cause letter that stated as follows –

Date: 26<sup>th</sup> March, 2019

Ms. Jayne Gathuri

Headmistress Junior Academy

Shah L. N. Academy

BOX 55

Nakuru

Dear Madam,

Re: Notice To Show Cause

This notice is in reference to incidences reported against you by parents whose children have enrolled at Shah Lalji Nangpar Academy. It is the parents' complaint that on various dates you received school fees payments in cash and/or via Mpesa from the parents yet you failed to remit the same to the school and consequently the said parents have outstanding feed.

Lack of remittal of received monies towards payment of the fees amounts to gross misconduct within the meaning of Kenyan Employment Act, 2007. You are thereby requested to submit your written explanation and justify as to why disciplinary action should not be taken against you.

Your explanation should reach the undersigned within 48 hours of receipt of this letter.

Yours faithfully,

School Manager

Andrew K. Thuku

CC: School Mamangement Committee

County Labour Office-Nakuru

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I JAYNE GATHURI accept the above letter.

Date: 26.03.2019 SIGNED

1. WITNESSED – SIGNED 2. Witnessed – SIGNED

Mr. John G. Ntunguranyi Mrs. Regina Onyango

Date: 26.3.2019 Date : 26.3.19

50. The above show-cause letter was issued by the respondent to the claimant after an internal audit indicated that there were huge fees arrears and once the parents were demanded to pay some of them responded that they had paid the fees balances through the claimant either in cash or via Mpesa. Yet the claimant had failed to demonstrate that she had indeed surrendered the said monies. The audit report that was availed in court was prepared by RW1 and the it concluded that the claimant had failed to account for a sum of Kshs.268,290/= in fees arrears paid to her by specific parents named in the said report.



51. Vide a letter of even date the claimant sought for details and particulars of the allegations against her in the show-cause letter and the details were supplied by the respondent vide a letter dated 28<sup>th</sup> March, 2019. The claimant responded to the show-cause letter in her letter of 29<sup>th</sup> March, 2019.
52. Vide a letter dated 29<sup>th</sup> March, 2019, which letter was served upon the claimant on the same day, the claimant was invited for a disciplinary hearing to be held on 2<sup>nd</sup> April, 2019. The said letter stated as follows –

29<sup>th</sup> March 2019

Ms. Jayne Gathuri

Headmistress Junior School

Shah L. N. Academy

Box 55

Nakuru

Dear Madam,

Re: Invitation To Disciplinary Hearing

Further to our letter dated the 26<sup>th</sup> of March, 2019 you are hereby invited to do disciplinary hearing on the 2<sup>nd</sup> of April, 2019 to answer charges of lack of remittance of monies towards payment of school fees.

The disciplinary hearing will be held at the Senior School Library at 10.30a.m. You have the right, if you wish, to be accompanied at the meeting by a work colleague of your choice.

Yours faithfully,

School Manager

Signed

Andrew K. Thuku

CC: School Management Committee

County Labour Office-Nakuru

I Jayne Gathuri acknowledge receipt of the above letter.

Signed Date: 29.03.19

Witness: Signed Date:29.03.10

Allan K. Kimani – Accountant

Witness – signed Date: 29.03.19

53. The minutes of the disciplinary hearing held on 2<sup>nd</sup> April, 2019 indicate that the claimant attended the meeting and was given an opportunity to defend herself. She was accompanied by her witness of choice, Jane Amondi, her secretary.



54. On 4<sup>th</sup> April, 2019 the respondent issued and served the claimant with a letter of termination by way of summary dismissal for gross misconduct. For ease of reference the said letter of termination provided that -

4<sup>th</sup> April, 2019

Ms. Jayne Gathuri

Headmistress Junior School

Shah L. N. Academy

BOX 55

Nakuru

Dear Madam,

Re: Termination Of Your Employment

We refer to the reports made to the management, subsequent meetings and the disciplinary hearing which was attended by you, parents, the committee, the management and your colleagues.

It was found that you failed to remit monies paid to you by parents made towards payment of school fees for children who attend Shah L. N. Academy.

Pursuant to Section 44 of the Employment Act 2007 your actions constitute serious misconduct tantamount to summary dismissal.

You were given a chance to a fair hearing in the presence of the witnesses, management and the school committee whereby it was evident that you are guilty of misconduct and therefore you are hereby summarily dismissed.

You were given a chance to a fair hearing in the presence of the witnesses, management and the school committee whereby it was evident that you are guilty of misconduct and therefore you are hereby summarily dismissed.

You are required to clear with the school when you will also be paid your accrued entitlements and any outstanding pay up to and including your last day of employment. This includes the leave days.

You will also be issued with a Certificate of Service.

Yours faithfully,

School Manager

Signed

Andrew K. Thuku

CC: School Management Committee

County Labour Office-Nakuru

I Jayne Gathuri acknowledge receipt of the above letter.

Signed Date: 4.04.19

Witness: Signed Date:04.04.2019



Mr. John Ntunguranyi

Witness – signed Date: 04.04.2019

Mr. Allan K. Kimani

55. The pay-slip for March, 2019 reads that the gross monthly salary for the claimant as at the time of dismissal was Kshs.106,000/=.
56. It is not in dispute that the claimant failed to account for all the monies paid through her by specific parents in fees arrears. It was concluded that the claimant had failed to remit and or account for a sum of Kshs.268,290/= and the details of the same are contained in the audit report prepared and produced in court by RW1. While the claimant alleged that she had submitted the said money and much more to Euxine, the former accountant, and she produced Mpesa statements to the effect that she had remitted well over Kshs.491,273/= to the said former accountant, there is no evidence that any of the remittances was in regard of school fees arrears paid by the specific parents. As RW1 stated in his evidence the said amounts were transacted through personal Mpesa lines which cannot be official and the same may as well have been in regard to personal business.
57. The jurisprudence on what constitutes substantive and procedural fairness in employment and labour matters has now crystallized. An employer has to have a lawful reason on which to found disciplinary hearing and the procedure adopted has to be fair, just, and lawful – See *Mary Chemweno v Kenya Pipeline Company Limited* (2017) eKLR, *Loice Otieno V Kenya Commercial Bank Limited* (2013) eKLR, and *Walter Ogal Anuro V Teachers Service Commission* (2012) eKLR.
58. The foregoing position is fortified by the provisions in Sections 35, 36, 41, 43, 44, 45, 46, 47, & 48 of the *Employment Act* (the Act).
59. It is not in dispute that the claimant received monies from various parents in cash and via Mpesa towards clearance of fees by the specific parents for their pupils. It is also not in dispute, or it has been proved, that by the time an audit was carried out in February, 2019 the claimant was unable to account for a sum of Kshs.268,290/=. She alleged that she had remitted the same to Euxine yet she availed no evidence of such remittance and or official receipt for the same. It is only after the respondent issued invoices to parents on the fees arrears that the respondent learnt that the claimant had received monies from some of those parents allegedly in arrears yet she had failed to disclose that fact and or account for the same.
60. In terms of the reason for dismissal the court has gone through the evidence, both oral and documentary, and I have concluded that the respondent genuinely believed and or suspected that the claimant, on reasonable and sufficient grounds, had committed a criminal offence against it or its property – See Sections 43(2) & 44(4)(g) of the Act. The claimant had collected and or received monies from parents in clearance of fees yet the said monies had neither been remitted nor officially receipted for. The assertion by the claimant that the monies had been submitted to Euxine could not be confirmed and or substantiated as the said former accountant was long gone and, in any event, the alleged transactions were privately done between the claimant and the said person.
61. The court disagrees with counsel for the claimant that she accounted for monies she received from the parents for and on behalf of the respondent. The court has gone through the letter of employment for the claimant and indeed confirms that it was not one of the duties of the claimant to collect fees arrears from the parents. As a prudent and honest employee, what the claimant ought to have done upon receiving monies from parents, under whatever circumstances, was to immediately remit the same to the accountant and ensure issuance of official receipt. That way, the claimant should have



- demonstrated good faith and honesty expected of her. Instead of doing this the claimant engaged in alleged personal transactions with the accountant which she was unable to demonstrate, both during the disciplinary hearing and in court, that it had anything to do with the monies collected from the parents.
62. Even if for a moment this court was to assume that the claimant remitted the collected monies to Euxine, which is however not the case, why did she not follow up for issuance of official receipt? Why did she transact on personal Mpesa lines for monies belonging to the school yet parents could have paid into the bank account or even come to the school to pay at the accountant's office? Why did she wait until parents complained after invoices were served upon them for her to admit that she had indeed received and or collected fees arrears from the parents? Why did she not report the matter of the fees she had collected in January, 2019 after Euxine failed to report for the new term? All the foregoing questions find no answer in the evidence adduced by the claimant and the submissions by her counsel.
  63. The court agrees with counsel for the respondent that the conduct of the claimant amounted to gross misconduct and the respondent had reasonable, genuine, and lawful grounds upon which to take disciplinary action against her as it did. It is noted that although the claimant had no mandate to collect and or receive fees, the respondent did not act based on that misconduct but rather on her failure to remit and account for the monies so received.
  64. It is the conclusion and holding of this court that in terms of substance the respondent has demonstrated and proved that it had good, reasonable, genuine, and lawful reasons and grounds upon which to found disciplinary proceedings against the claimant as it did.
  65. In terms of the procedure adopted by the respondent the claimant pleaded that she was not given a hearing yet the evidence on record proves that she was issued with a show-cause after a series of meetings with parents who had paid fees through her. She was invited for a hearing after she was supplied with details and particulars of the charges that faced her. She was informed of her right to come along with a witness and she indeed brought a witness, Jane Amondi, her secretary. While the entire disciplinary process from the show-cause letter to dismissal only lasted between 28<sup>th</sup> March, 2019 and 4<sup>th</sup> April, 2019, it is the view and opinion of this court that the claimant was accorded due process in the hearing. It is not the amount of time given that matters but the authenticity and veracity of the process. In any event, at no point did the claimant ask for more time and was denied. The claimant was a headteacher and hence an informed senior member of the teaching staff.
  66. The court has noted that in the documents produced by the respondent several meetings were held prior to the disciplinary hearing, wherein the claimant attended and gave her input. Yet, she did not have an explanation as to why she had no evidence of remittance of the monies she had received from the parents beyond the private Mpesa transactions between her and Euxine.
  67. It is the finding of this court that, in the entire circumstances of this cause and the evidence availed, the disciplinary hearing as conducted by the respondent met the minimum general requirements expected of a lawful and procedural hearing. The claimant was a headteacher and she fully understood the language used and the evidence adduced yet she had no plausible or reasonable defence to offer against the charges that faced her.
  68. Flowing from the foregoing, and the court has read and considered the written submissions by counsel for both parties, the court concludes that the dismissal of the claimant was fair and lawful both in substance and procedure, and it is so declared.



## **VI.Reliefs**

69. Having found and held as above the court shall now consider each of the reliefs sought by the claimant as follows. The reliefs were set out in the introductory part of this judgment. Prayer (a) and (b) are for declarations that the dismissal of the claimant was unlawful and unconstitutional. The court has arrived at a contrary opinion and this prayer is thus rejected, denied, and dismissed.
70. Prayer (c) is for compensation for violation of claimant's rights. There is no specific plea or evidence availed on how the claimant's rights were violated, breached, and or threatened – See Anarita Karimi Njeru V Republic (No. 1) (1979) KLR 154 and Mumo Matemu V Trusted Society of Human Rights Alliance (2014) eKLR. This prayer is hereby denied and dismissed.
71. Prayer (d) is for compensation in the sum of Kshs.1,474,990/= which amount is made of components in paragraph 19 of the memorandum of claim. Item (i) is for notice pay in lieu of notice in the sum of Kshs.106,000/, being one month's gross salary. The court has concluded that the claimant was fairly and lawfully dismissed for gross misconduct. In the circumstances, she was not entitled to any notice under Section 44(4)(g) of the Act. In any event, clause 27 of the employment contract provides for summary dismissal for gross misconduct.
72. Item (ii) is for service pay in the sum of Kshs.96,990/=. The evidence on record is that all deductions made from the salary of the claimant towards pension was remitted to NSSF. Clause 26 of the contract of employment provided for provident fund scheme and it is not alleged and proved by the claimant that the funds due therefor were not remitted by the respondent. Service pay is usually paid at the discretion of the employer over and above the remitted pension funds or if the same is provided for in the contract of employment. The court notes that the respondent did not undertake and has not agreed to pay for the same and the same is not provided for in the contract of employment. This claim is denied and dismissed.
73. Item (iii) is for compensation for alleged unfair and unlawful dismissal equivalent to 12 months gross salary. The court has found that the dismissal was fair and lawful and as such this claim is denied and dismissed.
74. The court notes that the claimant was paid Kshs.27,758/= on 23<sup>rd</sup> April, 2019 which comprised of salary for days worked and leave days earned. The court shall not disturb that settlement as there is nothing else that the court can fathom as due and payable to the claimant.

## **VII.Costs**

75. Ordinarily, costs follow the event. However, costs are at the discretion of the court and in the entire circumstances of this cause and in the interest of justice it is ordered that each party shall bear own costs.

## **VIII.Disposal**

76. In disposal of this cause, this court issues the following orders: -
- a. A declaration be and is hereby issued that the summary dismissal of the claimant was fair, just, and lawful.
  - b. Consequently, the claimant's cause is hereby dismissed.
  - c. Each party shall bear own costs.

**DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**



.....

**DAVID NDERITU**

**JUDGE**

